

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Petition for Order Declaring South Slope)	
Cooperative Telephone Company, Inc.)	WC Docket No. 04-347
An Incumbent Local Exchange Carrier in the)	
Iowa Exchanges of Oxford, Tiffin and Solon)	
)	

Comments of South Slope Cooperative Telephone Co., Inc.

I.

Introduction and Summary of Position

South Slope Cooperative Telephone Co., Inc. ("South Slope"), the Petitioner in this proceeding, files these Comments in response to the Notice of Proposed Rulemaking ("NPRM") released October 10, 2008, and in support of South Slope's Petition to obtain status as an Incumbent Local Exchange Carrier ("ILEC") pursuant to Section 251(h)(2) of the Act ("Section 251(h)(2)"). South Slope's Petition makes clear that this ILEC status is requested only for the Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom ("Iowa Telecom") exchanges of Oxford, Solon and Tiffin.¹ The basis for the Petition lies upon facts concerning South Slope's provision of local exchange and broadband facilities in those three communities, and in providing affected customers with the same advanced services available to South Slope's cooperative member/customers in other exchanges. See, South Slope Petition at 1-6; NPRM at

¹ South Slope notes that while the Commission has referred the Oxford, Solon, and Tiffin exchanges as separate, South Slope's certificate was amended to include the three areas in its North Liberty exchange. See Petition of South Slope Telephone Company, Inc. for an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act declaring that South Slope Cooperative Telephone Company, Inc. Shall Be Treated as an Incumbent Local Exchange carrier in the Iowa Exchanges of Oxford, Tiffin, and Solon, WC Docket 04-347, filed August 24, 2004, page 2 (South Slope's Petition).

para. 2. As part of a larger transaction with GTE Midwest, Inc., these exchanges were sold to Iowa Telecom, which presently serves as the ILEC.

The instant NPRM follows the policy established in the Mid-Rivers proceeding, WC Docket 02-78, Notice of Proposed Rulemaking, 19 FCC Rcd. 23070 (2004), and as required by Section 251(h)(2). NPRM at para. 1, n. 1. The prior pleading cycle for South Slope's Petition, filed August 24, 2004, together with the Petition itself, establish convincingly that South Slope's regulatory status in these three exchanges should be as an ILEC. As is discussed in greater detail, its case is even stronger now. South Slope occupies a market position within an area that is comparable to the position of the legacy incumbent LEC, Iowa Telecom; it has "substantially replaced" Iowa Telecom in the three areas; and, South Slope's requested reclassification is consistent with the public interest, convenience and necessity and the purposes of Section 251. NPRM at para. 3; Section 251(h)(2).

South Slope further addresses the question raised by the NPRM as to the long-term regulatory treatment of both South Slope and Iowa Telecom. NPRM at paras. 10-13. In this respect, South Slope supports applying the results of the Commission's decision in the Mid-Rivers case, where the petitioner, Mid-Rivers Telephone Cooperative, Inc., remained subject to existing competitive LEC non-dominant regulation pending further Commission action. At the same time, the legacy ILEC, Qwest, was declared as subject to the same non-dominant treatment. See Petition of Mid-Rivers Telephone Cooperative, Inc. for Order Declaring It to Be An Incumbent Local Exchange Carrier In Terry, Montana Pursuant To Section 251(h)(2), WC Docket No. 02-78, Report and Order, 21 RCC Rcd 11506 (2006) ("Mid-Rivers Order") at paras. 20, 35. South Slope submits that any further changes with respect to Iowa Telecom's regulatory status (such as forbearance, as discussed in paragraph 11 of the NPRM) should await a filing by

Iowa Telecom for that purpose and should await Commission action to change South Slope's regulatory status for purposes other than Section 251(h)(2) (by including Oxford, Solon, and Tiffin in South Slope's regulated, interstate operations). On this score, the NPRM seeks comment on whether those issues (the "...long-term regulation of South Slope's interstate operations in these exchanges...") should be addressed in the current proceeding. South Slope intends to file a study area waiver in the near future and urges the Commission to address the long-term regulation of South Slope's interstate operations in that separate proceeding.

These two subjects -- how South Slope satisfies the statutory elements of Section 251(h)(2) in Oxford, Tiffin, and Solon, and the appropriate regulatory treatment for both Iowa Telecom and South Slope -- will be discussed in order.

II

The Statutory Elements of Section 251(h)(2) Are Satisfied By South Slope

1.

South Slope Occupies a Market Position within an Area That Is Comparable To the Position of the Legacy ILEC, Iowa Telecom

The NPRM notes that the first element to be satisfied, as part of Section 251(h)(2)'s three-part test, is whether South Slope occupies "...a position in the market for telephone exchange service within an area that is comparable to the position occupied by [a legacy incumbent LEC]", citing 47 U.S.C. § 251(h)(2)(A). NPRM at para. 7. The NPRM tentatively concludes that South Slope satisfies this requirement. Specifically, it bases this conclusion upon "South Slope's extensive facilities build-out and its estimate that [South Slope] now provides local exchange service to approximately 90 percent of the subscribers in these exchanges over its own facilities." Id. at para. 7. Here, the NPRM refers in footnote 32 to South Slope's January,

2007 Ex Parte letter, to South Slope's Petition at 3, and to its Reply Comment at 11.² These pleadings and the January 2007 Ex Parte letter accurately describe the facilities-based network that South Slope has constructed throughout the three Iowa Telecom exchanges, and the very high levels of subscriber penetration which South Slope has achieved – the lowest being 89.6% of dial-tone subscribers in the Tiffin, Iowa exchange. The comparable percentages for Solon and Oxford, Iowa exchanges were, respectively, 90.2% and 91.6%. South Slope has reviewed its factual assertions relied upon in the referenced portion of the NPRM and attests to their continuing accuracy, except as noted here; in fact, dial-tone subscriber penetration has actually increased between the filing of South Slope's petition and the January 2007 Ex Parte letter. This increase in the percentage of subscribers served by South Slope is discussed later herein.

As the NPRM notes, the FCC found that Mid-Rivers had satisfied the 'Comparable Market Position within an Area' statutory requirement based on very similar facts. There, the Commission found that Mid-Rivers had overbuilt Qwest's Terry, Montana exchange, served its customers with entirely its own facilities, and that Mid-Rivers served between 85 and 93 percent of the access lines in the Terry exchange. Mid-Rivers Order at paras. 2, 10-13.

The NPRM's tentative conclusion that South Slope has satisfied the 'Comparable Market Position within an Area' requirement of Section 251(h)(2)(A) should be affirmed. South Slope has substantially overbuilt the Tiffin, Oxford and Solon, Iowa Telecom exchanges with its own state of the art facilities (indeed, in some cases they are the only facilities) and South Slope has achieved subscriber penetration of slightly over 90% in the three exchanges. These factors,

² On January 29, 2007, South Slope filed an Ex Parte letter showing updated penetration data for the three exchanges. It estimated that it served 90.2 percent of the dial tone subscribers in the Solon exchange, 89.6 percent of the dial tone subscribers in the Tiffin exchange and 91.6 per cent of dial tone subscribers in the Oxford exchange. Letter from Benjamin H. Dickens, Jr. and Mary J. Sisak, Counsel for South Slope Cooperative Telephone Co., Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-347 (filed Jan. 29, 2007) (South Slope January 2007 Ex Parte Letter). See also NPRM at para. 2 & n. 11.

including the Commission's ruling on strikingly similar facts in the Mid-Rivers Order, support this conclusion.

2.

South Slope Has Substantially Replaced the Legacy Incumbent LEC

The NPRM invites comment on whether South Slope has “substantially replaced” Iowa Telecom as the incumbent LEC in the relevant exchanges, citing the separate element of Section 251(h)(2)(B). NPRM at para. 8. The NPRM notes that the Commission earlier concluded that, in the Mid-Rivers proceeding, it found that Mid-Rivers had ‘substantially replaced’ Qwest, within the meaning of the statute, and primarily because Mid-Rivers served approximately 85 to 93 percent of the access lines in the Terry exchange, largely using its own facilities. Id. The NPRM tentatively concludes that, in light of South Slope's estimate that it serves approximately 90 percent of the subscribers in the Solon, Tiffin and Oxford exchanges, and utilizes its own facilities, it too has satisfied the ‘Substantially Replaced’ element of Section 251(h)(2).

South Slope submits that this tentative finding is supported by the record (see, e.g., NPRM, nn. 32 & 34) and by the Commission's earlier decision in the Mid-Rivers Order. If anything, South Slope's market position, experienced as a percentage of access lines, has slightly improved in this respect. While the total access lines served by both Iowa Telecom and South Slope has declined slightly, South Slope's relative percentage of lines has increased slightly, now estimated to be approximately 91 percent of the total access lines.

In sum, South Slope's estimated share of dial tone subscribers (or access lines) clearly meets, or exceeds, the benchmarks utilized in the Mid-Rivers Order; the NPRM's tentative conclusion that South Slope thus meets the ‘Substantially Replaced’ element of the statute, thus should be affirmed.

**South Slope's Classification as an Incumbent
LEC Is Consistent With the Public Interest**

The NPRM seeks comment on whether treating South Slope as the incumbent LEC would satisfy the public interest element of the statute, found at Section 251(h)(2)(C). NPRM at para. 9. The NPRM notes that the Commission earlier concluded that treating Mid-Rivers as the incumbent LEC in that proceeding indeed satisfied the public interest requirement. Id.

South Slope submits that such a public interest finding is equally warranted here. First, South Slope's success in the market place, vis-à-vis the existing incumbent LEC, Iowa Telecom, is very similar to the facts in the Mid-Rivers proceeding. Both South Slope and Mid-Rivers achieved access line market shares of approximately 90 percent, and neither carrier has needed to rely upon the respective incumbent (Iowa Telecom and Qwest) to serve the captured lines. In other words, both carriers have completed extensive facility overbuilds to serve the affected exchanges.

Second, the Commission in Mid-Rivers found that the public interest would be served by bringing the Terry, Montana exchange "one step closer" to the market opening provisions of Section 251(C) of the Act (47 U.S.C. § 251(C)). Mid-Rivers Order at para. 18. On this score, the Commission reasoned that, as a non-incumbent LEC, Mid-Rivers would be permanently exempt from this requirement. Id. It is particularly noteworthy that the Commission made this finding on a record reflecting that Mid-Rivers still enjoyed its "rural exemption" under Section 251(F)(1) of the Act (47 U.S.C. § 251(F)(1)). The Commission found persuasive, in public interest terms, that the treatment of Mid-Rivers' competitive operation as an incumbent, albeit still subject to the rural exemption, would bring those operations "one step closer" to Section 251(C).

Against this background, South Slope's lack of a rural exemption is certainly relevant. The treatment of South Slope in Oxford, Tiffin and Solon as an incumbent LEC will likewise move closer the day that South Slope's operations in these areas will be subject to Section 251(C) interconnection requests. As discussed later, South Slope proposes that such dominant regulatory machinery should be applied at the time that these operations are treated as dominant for tariffing and other purposes. At that time, however, South Slope will be responding to such requests without the benefits of a rural exemption. For this reason, it may be said that the grant of South Slope's Petition will bring these areas two steps closer to Section 251(C). In any event, it is in the public interest.

Finally, the grant of South Slope's Petition is in the public interest because South Slope's independent network promotes facilities-based competition in Oxford, Solon, and Tiffin. As the Commission recognized in the Mid-Rivers NPRM, Section 251 is a "major element in Congress' plan to promote competition in the market for local exchange service."³ Not only has the Commission long recognized facilities-based competition as being in the public interest as serving the Act's overall goals,⁴ but it has gone so far as to state that of the three methods of entry mandated by the Act, facilities-based competition "is most likely to bring consumers the benefits of competition in the long run."⁵ Indeed, there can be no question that granting South Slope's Petition would be in the public interest because such a grant, as the Commission is plainly aware, would directly result in furthering the goals of the Act.

³ Mid-Rivers NPRM, citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, 15506, para. 4 (1996) (Local Competition First Report and Order).

⁴ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17025, P 70 (2003)

⁵ In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection, Notice of Proposed Rulemaking, 16 FCC Rcd 20641, 20644-45, P 5 (2001)

III

Regulatory Treatment for Iowa Telecom and South Slope

The NPRM seeks comment on the proposed long-term regulatory treatment of both South Slope and Iowa Telecom. NPRM at paras. 10-13. South Slope supports the Commission's tentative conclusion in the NPRM that Iowa Telecom should be given non-dominant regulatory treatment for interstate purposes in the Oxford, Tiffin and Solon if South Slope is accorded incumbent LEC status. South Slope submits that any further changes with respect to Iowa Telecom's regulatory status (such as forbearance, as discussed in paragraph 11 of the NPRM), should await a filing by Iowa Telecom for that purpose and Commission action to change South Slope's regulatory status for purposes other than Section 251(h)(2), by including Oxford, Solon, and Tiffin in South Slope's regulated, interstate operations.

With respect to the long-term regulation of South Slope, South Slope will file a study area waiver request in the near future, and upon favorable action on South Slope's Petition, as proposed in the NPRM to include Oxford, Tiffin and Solon in South Slope's regulated, interstate operations. As in the Mid-Rivers proceeding, South Slope believes the Commission should address the long-term regulatory treatment of South Slope in Oxford, Tiffin and Solon in conjunction with the study area waiver request. Further, in accordance with the Mid-Rivers decision, South Slope should remain subject to existing competitive LEC non-dominant regulation for its interstate telecommunications services in Oxford, Tiffin and Solon pending Commission action on the study area boundary waiver request.

IV

Conclusion

In light of the foregoing, South Slope respectfully submits that the Commission should affirm its tentative findings that South Slope occupies a comparable market position within an area that is comparable to the legacy ILEC; that South Slope has substantially replaced the legacy incumbent LEC; that a grant of the petition is consistent with the public interest; and that South Slope's requested relief accordingly should be granted. South Slope further submits that South Slope should remain subject to existing competitive LEC non-dominant regulation and the Commission should affirm its tentative conclusion that Iowa Telecom should be deemed a non-dominant carrier if the petition is granted, but that any further changes with regard to the regulation of either South Slope or Iowa Telecom should be await further proceedings.

Respectfully submitted,

**SOUTH SLOPE COOPERATIVE
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Dated: December 10, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 10th day of December, 2008, a copy of the **Comments of South Slope Cooperative Telephone Company, Inc**, was served via electronic mail or by U.S. Mail, as indicated, to the following:

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